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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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| 09/620,561 | 07/20/2000 | Michael C. Keifer | 22441.00001 | 2898 |

27476 7590 09/30/2003

Chiron Corporation
Intellectual Property - R440
P.O. Box 8097
Emeryville, CA 94662-8097

EXAMINER

LANDSMAN, ROBERT S

| ART UNIT | PAPER NUMBER |
|----------|--------------|
|----------|--------------|

1647

DATE MAILED: 09/30/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/620,561

Applicant(s)

KEIFER ET AL.

Examiner

Robert Landsman

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 03 February 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 23,31,33-35,37,40 and 44 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 23,31,33-35,40 and 44 is/are allowed.
- 6) ☒ Claim(s) 37 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

1. Formal Matters

- A. Amendment C, filed 2/3/03, has been entered into the record.
- B. Claims 23, 31, 33-35, 37, 40 and 44 are pending and are the subject of this Office Action.
- C. All Statutes under 35 USC not found in this Office Action can be found, cited in full, in a previous Office Action.

2. Specification

- A. The objection to the specification has been withdrawn in view of Applicants amendment to the title.

3. Claim Objections

- A. Claims 23, 31, 33-35, 37, 40 and 44 are objected to since the claims recite a composition. However, only one item has been recited in this composition (i.e. hFGFr) and a composition implies more than one substance. Therefore, the claims should be amended to recite, for example, "...and an inert carrier" – **without adding new matter**.

4. Claim Rejections - 35 USC § 112, first paragraph

- A. All rejections under 35 USC 112, first paragraph, have been withdrawn in view of Applicants limiting the claims to SEQ ID NO:1

5. Claim Rejections - 35 USC § 112, second paragraph

- A. All rejections under 35 USC 112, second paragraph, have been withdrawn in view of Applicants limiting the claims to SEQ ID NO:1 and removing the subject matter rejected on page 5 of the Office Action dated 11/4/02. However, a new rejection under 35 USC 112, second paragraph, appears below.
- B. Claim 37 is vague and indefinite since the claim recites "hybridization conditions." It is not known what these conditions are. Nucleic acid molecules which hybridize under conditions of "low" stringency would not necessarily hybridize under conditions of "high" stringency. Furthermore, not all conditions of "high" or "low" stringency, for example, are the same. Therefore, it is required that Applicants amend the claims to recite the

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exact hybridization conditions without using indefinite phrases such as "*for example*" **without adding new matter.**

7. Claim Rejections - 35 USC § 102

A. All rejections under 35 USC 102 have been withdrawn in view of Applicants' amendments to the claims to recite the protein must encode SEQ ID NO:1.

8. Claim Rejections - 35 USC § 103

A. All rejections under 35 USC 103 have been withdrawn in view of Applicants' amendments to the claims to recite the protein must encode SEQ ID NO:1.

9. Conclusion

A. Claims 23, 31, 33-35, 40 and 44 are allowable.

Advisory information


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert Landsman whose telephone number is (703) 306-3407. The examiner can normally be reached on Monday - Friday from 8:00 AM to 5:00 PM (Eastern time) and alternate Fridays from 8:00 AM to 5:00 PM (Eastern time).

If attempts to reach the examiner by telephone are unsuccessful, the Examiner's supervisor, Gary Kunz, can be reached on (703) 308-4623.

Official papers filed by fax should be directed to (703) 308-4242. Fax draft or informal communications with the examiner should be directed to (703) 308-0294.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-0196.

Robert Landsman, Ph.D.
Patent Examiner
Group 1600
September 29, 2003


ROBERT LANDSMAN
PATENT EXAMINER